IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

WP(C).No. 18799 of 2006(K)

PETITIONER:

M/S. CITIFINANCIAL SUNSUMER FINANCE INDIA LTD. (CITIFINANCIAL) IKKANDAWARRIER ROAD, THRISSUR REP.BY IT'S REGIONAL HEAD,RAJEEV K.KAIMAL

BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI.T.K.SAIDALIKUTTY
SRI.P.M.KUNJIMOIDEENKUTTY
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SRI.KKM.SHERIF

RESPONDENTS:

1. **STATE OF KERALA, REP. BY PRINCIPAL SECRETARY (FINANCE), SECRETARIAT, THIRUVANANTHAPURAM.**
2. **THE COMMISSIONER, COMMERCIAL TAXES, THIRUVANANTHAPURAM.**
3. **THE DEPUTY COMMISSIONER OF AGRICULTURAL INCOME TAX & SALES TAX, THRISSUR. (THE APPELLANT AUTHORITY).**
4. **THE INSPECTING ASSISTANT COMMISSIONER, COMMERCIAL TAXES, THRISSUR.**

BY GOVERNMENT PLEADER SRI.V.V.ASOKAN
BY ADV.SRI.T.P.KELU NAMBIAR (SR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/01/2007, ALONG WITH WP(C) 24058/2004 AND CONNECTED CASES THE COURT ON 19.02.2007 DELIVERED THE FOLLOWING:

W.P.(C) NO.18799/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CERTIFICATE OF REGISTRATION NO.14.00002 DT.21.4.04.

EXT.P2:- COPY OF THE NOTICE DT.19.8.05 ISSUED BY THE 4TH RESPONDENT.

EXT.P3:- COPY OF THE STATEMENT OF THE PETITIONER IN RESPONSE TO EXT.P2.

EXT.P4:- COPY OF THE NOTICE NO.A6-2082/05-06 DT.13.09.05 PROPOSING PENALTY U/S. 18 C.

EXT.P4(a):- COPY OF THE NOTICE NO.A6-2082/05-06 DT.13.9.05 PROPOSING PENALTY U/S. 18C

EXT.P5:- COPY OF THE OBJECTION STATEMENT SUBMITTED BY THE PETITIONER.

EXT.P6:- COPY OF THE ARGUMENT NOTE SUBMITTED BY THE COUNSEL ON BEHALF OF THE PETITIONER.

EXT.P7:- COPY OF THE NOTICE NO.A6-2082.04-05 DT.16.11.05 CALLING FOR OBJECTION PROPOSING IMPOSITION OF PENALTY U/S. 18D.

EXT.P8:- COPY OF THE NOTICE NO. A6-2082/05-06 DT. 16.11.05 CALLING FOR OBJECTION PROPOSING IMPOSITION OF PENALTY U/S. 18 D.

EXT.P9:- COPY OF THE REPRESENTATION BEFORE THE 2ND RESPONDENT.

EXT.P10:- COPY OF THE COMMUNICATION FROM RBI ADDRESSED TO PRINCIPAL SECRTARY (FINANCE).

EXT.P11:- COPY OF THE JUDGMENT DT.14.11.05 IN OP. NO.23121/99.

EXT.P12:- COPY OF THE ORDER NO.13365/H2/05/TD DT.10.2.06.

EXT.P13:- COPY OF THE ORDER NO.A6-2082/04-05 DT.23.1.2006 IMPOSING A PENALTY OF RS.10 LAKHS AND DEMAND NOTICE.

EXT.P14:- COPY OF THE ORDER NO.A6-2082/05-06 DT.23.1.06 IMPOSING A PENALTY OF RS.75 LAKHS AND DEMAND NOTICE.

EXT.P15:- COPY OF THE MEMORANDUM OF APPEAL AND STAY PETITION AGAINST EXT.P13.

EXT.P16:- COPY OF THE MEMORANDUM OF APPEAL AND STAY PETITION AGAINST EXT.14.

EXT.P17:- COPY OF THE JUDGMENT DT.3.3.06 IN WP(C) NO.5664/06.

W.P.(C) NO.18799/1006

EXT.P18:- COPY OF THE ORDER DT. 10.3.06 IN WP(C) 7173/06.

EXT.P19:- COPY OF THE PROCEEDINGS OF IAC TVM.

EXT.P20:- COPY OF THE INTERIM ORDER DT, IN 25.4.06 IN WP(C) NO.11664/06.

EXT.P21:- COPY OF THE REPRESENTATION DT.2.6.06.

EXT.P22:- COPY OF THE ORDER DT. ON 28.4.06.

EXT.P23:- COPY OF THE COMMUNICATION DT.23.2.06 BY THE 2ND RESPONDENT ADDRESSED TO THE PETITIONER.

EXT.P24:- COPY OF THE CLARIFICATIONS FROM RESERVE BANK OF INDIA AS TO THE SUMMARY OF AMENDMENTS MADE TO THE RBI ACT BY RBI (AMENDMENT) ACT 1997.

EXT.P25:- COPY OF THE EXCERPT OF VASUDEVA COMMITTEE REPORT.

EXT.P26:- COPY OF THE EXCERPT OF KHANNA COMMITTEE REPORT.

K.BALAKRISHNAN NAIR,J.

WP(C)NOS.24058/04, 8202/05, 33935/05, 2397/06, 6986/06, 7173/06, 7304/06, 7526/06, 8264/06, 10085/06, 10482/06, 11646/06, 11664/06, 12076/06, 12378/06, 12498/06, 12500/06, 12827/06, 13966/06, 14005/06, 14036/06, 16515/06, 17244/06, 17291/06, 17741/06, 18170/06, 18799/06, 24552/06 and 24659/06

Judgment

Common questions arise for decision in these Writ Petitions. Therefore, they are heard together and disposed of by this common Judgment. The main point that arises for decision in all these cases, is whether the provisions of the Kerala Money Lenders Act, 1958 are applicable to the non-banking financial companies, registered under the Reserve Bank of India Act. I will refer to the pleadings and contentions in two cases, which are treated as the main cases.

Writ Petition (C) No.18799/06

2. The petitioner is a non-banking financial company, registered under the Reserve Bank of India Act. Ext.P1 is the registration certificate issued to it by the Reserve Bank of India under Section 45 IA of the Reserve Bank of India Act. It is engaged in granting loans under various schemes. It is having branches all over the country, including at various places in Kerala. According to the petitioner, since it is having registration under the RBI Act, it is not governed by the provisions of the Kerala Money Lenders Act. While so, the Branch Managers of the petitioner's Company were served with notices by the respective Inspecting Assistant Commissioners of Commercial Taxes, directing them to register the branches of the petitioner Company under Section 3 of the Kerala Money Lenders Act. Ext.P2 is one such notice issued to the Thrissur Branch of the petitioner. The

petitioner filed a detailed objection Ext.P3, stating that the Kerala Money Lenders Act is not applicable to it. But, ignoring the said objection, the 4th respondent Inspecting Assistant Commissioner, Commercial Taxes, Thrissur issued Exts.P4 and P4(a) notices dated 13.09.2005, proposing to impose penalty on the petitioner, for not taking out registration under the Kerala Act. The petitioner submitted Ext.P5 objection. Later, at the time of hearing, Ext.P6 argument note was submitted on behalf of the petitioner before the 4th respondent. Thereafter, it was served with Exts.P7 and P8 notices, proposing to impose penalty under Section 18D of the Kerala Money Lenders Act, respectively for the years 2004-05 and 2005-06. In the meantime, the petitioner approached the 2nd respondent Commissioner of Commercial Taxes, pointing out the illegality in initiating penalty proceedings against it. Ext.P9 detailed representation was filed and along with that, a copy of Ext.P10 letter addressed by the Reserve Bank of India to the Finance Secretary to the Kerala Government, was also furnished to the 2nd respondent. In Ext.P10, the Reserve Bank of India has requested the Government to exempt the non-banking financial companies from the purview of the Kerala Money Lenders Act. The 2nd respondent forwarded Ext.P9 representation to the Government. Similar representations, filed by three other non-banking financial companies were already pending before the Government. There was already a direction from this Court, as per Ext.P11 Judgment to consider those representations. In obedience to the said direction, the Government passed Ext.P12 order dated 10.02.2006, holding that the Reserve Bank of India Act and the Kerala Money Lenders Act operate in different fields and the non-banking

financial companies cannot be exempted from the provisions of the Kerala Money Lenders Act. In the meantime, the 4th respondent rejected the contentions of the petitioner and imposed penalty on it under Section 18D of the Kerala Money Lenders Act for the years 2004-05 and 2005-06, by Exts.P13 and P14 orders respectively. The petitioner challenged those orders by filing Exts.P15 and P16 appeals along with necessary interlocutory applications. This Court, by Ext.P17 Judgment, directed the appellate authority to dispose of the said interlocutory applications within three weeks and the appeals within three months. The appellate authority finally dismissed the appeals, by Ext.P22 order. This Writ Petition is filed, challenging Ext.P22 and also seeking a declaration to the effect that the non-banking financial companies registered under the RBI Act will not come within the purview of the Kerala Money Lenders Act.

Writ Petition(C) No.7173/06

3. The petitioner herein is a non-banking financial company, registered under the RBI Act. Ext.P1 is the registration certificate issued to it by the Reserve Bank of India on 25.05.1998, under Section 45 IA of the RBI Act. Ext.P2 is the certificate of incorporation, issued by the Registrar of Companies, Kerala, registering the company under the Indian Companies Act, 1956. Going by the scheme of the RBI Act and the Kerala Money Lenders Act, the provisions of the Kerala Act will not apply to the non-banking financial companies like the petitioner, which are registered under the RBI Act, it is submitted. So, the RBI wrote to the Kerala Government by Ext.P3 communication, to exempt such companies from the operation of the Kerala Act. This Court, by Ext.P4 Judgment,

directed the Government to consider whether non-banking financial companies, registered under the RBI Act should take registration under the Kerala Money Lenders Act. But, the Government, by Ext.P5, rejected the claim of the non-banking financial companies. So, this Writ Petition is filed, challenging Ext.P5 and also seeking a declaration to the effect that the Kerala Government has no authority or jurisdiction to insist that the petitioner Company should take registration under the Kerala Money Lenders Act. It prays inter alia, for a further declaration that the State Legislature has no competence to impose unreasonable restrictions on the petitioner in carrying on its business, by invoking the provisions of the Kerala Money Lenders Act. The main contention of the petitioner herein is identical to the contention of the petitioner in Writ Petition (C) No.18799/06. According to the petitioner, in view of the registration taken under the RBI Act, it is unnecessary for it to take licence under the Kerala Money Lenders Act.

4. The official respondents have filed a counter affidavit in Writ Petition (C) NO.6986/06, a copy of which has been filed in this Writ Petition along with an adoption memo. According to the official respondents, the Kerala Money Lenders Act is meant to provide for the regulation and control of money lending in the State. The activities of non-banking financial companies are regulated under the provisions of Chapter IIIB of the RBI Act. The petitioner Company comes under the definition of "money lender". There are no provisions in the Companies Act or the RBI Act, concerning money lending. In the decision in ***Premier Kuries & Loan (P) Ltd. v. State of Kerala*** (1995(1) KLT 726),

this Court has held that a Company engaged in money lending will come under the definition of 'money lender'. Ext.P5 is legal and valid. The petitioner has to take licence for each of its branches under the Kerala Money Lenders Act. The enforcement of the law of the land cannot be treated as an unreasonable restriction on the right of the petitioner to carry on its business under Article 19 (1)(g) of the Constitution of India. The petitioner, being a money lender, is bound to take licence under the Kerala Act. The State Legislature is competent to make laws for regulation and control of the business of money lending in the State of Kerala. So, the Kerala Money Lenders Act is a valid legislation. Thus, the official respondents submit that the petitioner is not entitled to any relief and therefore, the Writ Petition may be dismissed.

5. I heard the learned counsel on both sides. Apart from the learned Senior counsel appearing in the above two Writ Petitions, the learned counsel appearing in the connected cases were also heard. The learned Senior Counsel Mr..T.P.Kelu Nambiar appeared for the writ petitioner in Writ Petition(C) No.18799/06. He made the following submissions :

The Kerala Government and its officers maintain the stand that the non-banking financial companies are governed by the Kerala Money Lenders Act, relying on the decision of this Court in ***Premier Kuries and Loans Pvt Ltd v. State of Kerala*** (1995(1) KLT 726). The said decision was rendered on 10.03.1995. But, subsequently, Chapter IIIB of the RBI Act was drastically amended by Act 23 of 1997 with effect from 09.01.1997. A close reading of the decision would show that the same will not apply to the facts of this case. The petitioner, which is a non-

banking financial company, was registered under Section 45 IA, which was enforced with effect from 09.01.1997. Ext.P1 certificate of registration dated 21.04.2004 is issued, subject to the Company's continued adherence to all the conditions and parameters stipulated under Chapter IIIB of the RBI Act. The petitioner is an institution, established under the Acts of Parliament, namely, the Companies Act and the RBI Act. Therefore, it is exempted under Section 2(7)(f) of the Kerala Money Lenders Act, especially in the light of Explanation 2 of Section 2(7). The reliance placed by the learned Judge in the above said decision on Section 3(42) of the General Clauses Act, is untenable. The petitioner Company will not come under the inclusive definition of "person" under the General Clauses Act. A non-banking financial company is the creation of the RBI Act. Therefore, it will not come under the definition of 'money lender', it is submitted.

6. The learned Senior Counsel Sri.Arvind Dattar, appearing for the petitioner in Writ Petition (C) No.7173/06 submitted that the non-banking financial companies are registered under the RBI Act and therefore, they should be treated as established under an Act of Parliament. The decision in ***Premier Kuries'*** case will not apply, after Chapter IIIB has been drastically amended with effect from 09.01.1997. After the said date, no company can carry on money lending or other non-banking activities like hire-purchase, leasing, investment in securities etc, without the registration under the RBI Act. These activities are now comprehensively regulated by the Reserve Bank of India. Thus, the grounds for including a Company under the definition of "money lender" in 1995, no longer

exist. In view of Entry 43 of List I of the 7th Schedule of the Constitution of India, the Parliament has the legislative competence for enacting statutory provisions, providing for registering and regulating the activities of a non-banking financial company. In this context, the learned Senior counsel relied on the decisions in ***Kanta Mehta v. Union of India*** (1987) 62 Company Cases 769), ***T.Velayudhan Achary v. Union of India*** (1993) 2 SCC 582), ***Vijay C Pulaji v. State of Maharashtra*** (Writ Petition No.294 of 2005) and ***Chargola Tea Co. v. Assam Financial Corporation*** (AIR 1973 SC 136).

7. The learned Senior Counsel pointed out that money lending is covered by Entry 30 of List II of the 7th Schedule of the Constitution. The regulation of unincorporated associations, individuals, firms etc. fall under Entry 32 of List II. Though banks and non-banking financial corporations are engaged in money lending, they cannot be regulated under the State enactment. The Reserve Bank of India is competent to fix the rate of interest for banks/non-banking financial companies. But, under the present economic policy, the RBI has left it to the individual non-banking financial companies to charge interest rates they deem fit. Under the Kerala Money Lenders Act, there is a notification putting a ceiling on the rate of interest that can be collected, as 12 %. If a non-banking financial company is not liable to take out licence under the Kerala Money Lenders Act, the above notification, fixing the ceiling, will not apply to it. The fixation of 12% interest for money lending in Kerala under the Kerala Act is arbitrary and made without any basis, it is submitted by the learned Senior Counsel.

8. The learned Senior Counsel added, the RBI Act presently covers the lending activities of the non-banking companies. The State Legislation cannot seek to regulate the very same activities. The power of the State Legislature is always subject to the powers of the Parliament. So, the learned Senior Counsel submits that the provisions of the Kerala Act are not applicable to the petitioner.

9. The learned counsel for the petitioners in the connected Writ Petitions adopted the contentions of the learned Senior Counsel. I heard Mr.V.V.Asokan, learned Special Government Pleader for Taxes on behalf of the State. The learned Special Government Pleader took me through Articles 245 and 246 of the Constitution and also Entries 38, 43 and 45 of List I. He also referred to Entry 30 of List II of the 7th schedule and brought to my notice, the various relevant provisions of the RBI Act. The contention of the petitioners that they being companies registered under the Companies Act, do not come under the provisions of the Kerala Money Lenders Act, was earlier raised before this Court. The said contention was repelled by this Court in ***Premier Kuries***' case mentioned above. Incidental trenching or overlapping into another field of legislation is not fatal or the same would not in any way, invalidate the State Legislation. The pre-dominance of list I will not prevent the State Legislature from legislating on subjects covered by List II. 'Repugnancy' or 'occupation of the field' etc, will apply only to the subjects under the concurrent list. So, the learned Government Pleader prays for dismissing the Writ Petitions, overruling the contentions of the writ petitioners.

10. The learned Standing Counsel Mr.Jacob Varghese appearing for the

Reserve Bank of India supported the contentions of the writ petitioners. According to him, the various circulars issued by the Reserve Bank of India covers the field of lending also and therefore, it is unnecessary for the State Government to control the lending activities of the non-banking financial companies under the Kerala Money Lenders Act. So, the Reserve Bank of India has written to the Finance Secretary of the Kerala Government to exempt the non-banking financial companies from the operation of the Kerala Money Lenders Act. The learned Standing Counsel made special reference to Non-banking Financial Companies Prudential Norms (Reserve Bank) Directions 1998, issued by the Reserve Bank of India under Section 45 JA on 31.01.1998. Since there are already provisions in the RBI Act, concerning regulation of lending and norms have already been notified under those provisions, it is unnecessary for the State Government to insist that the non-banking financial companies should take licence under the Kerala Act, it is submitted.

11. The main contentions raised by the petitioners may be summarised under two heads. The first contention is that the non-banking financial institutions do not come under the definition of 'money lender' in Section 2(7) of the Kerala Money Lenders Act. The second contention is that in view of the provisions of the RBI Act, the provisions of the Kerala Money Lenders Act are inapplicable.

12. The first contention that the petitioners do not answer the definition of money lender, is made relying on two grounds. The first ground is that a non-banking financial company is not a person and therefore, the definition of money

lender does not apply to it. The opening part of the definition of money lender reads as follows :

> *"Money Lender means <u>a person</u> whose main or subsidiary occupation is the business of advancing and realising loans or acceptance of deposits in the course of such business and includes any person appointed by him to be in charge of a branch office or branch offices or a liaison office or any other office by whatever name called, of his principal place of business and a pawn broker, but does not include-....."* *(emphasis supplied)*

The above said ground urged, relying on the word 'person' in the above definition, is squarely covered against the petitioners by the decision of this Court in ***Premier Kuries and Loans (P) Ltd***'s case (supra). Relying on the definition of "person" in Section 3(42) of the General Clauses Act (Central Act), this Court held that the word person, used in the definition of money lender would partake within its fold, a Company also. This Court further held that whichever institutions the legislature wanted to exclude, have been specifically excluded from the definition. Though, the learned counsel appearing for the petitioners tried to canvass that the said finding is not correct and therefore, it requires reconsideration, I find no reason to take a different view. I am in respectful agreement with the view taken in that decision.

13. The second ground urged is that the petitioners should be taken as exempted under Section 2(7)(f) of the Kerala Money Lenders Act. Clause (f) reads as follows :

> *"Money Lender means a person whose main or subsidiary occupation is the business of advancing and realising loans or acceptance of deposits in the course of such business and includes any person appointed by him to be in charge of a branch office or branch offices or a liaison office or any other office by whatever name called, of his principal place of business and a pawn broker, but does not include-*
>
> .....
>
> *(f) <u>any institution established by or under an Act of Parliament or the Legislature of a State, which grants any loan or advance in pursuance of the provisions of that Act.</u>"* *(emphasis supplied)*

Clauses (a) to (f) speak of institutions that are excluded from the definition of money lender. According to the learned counsel, since the non-banking financial companies are registered under the provisions of the RBI Act, they should be treated as institutions, established under an Act of Parliament, namely, the RBI Act. A company incorporated under the Indian Companies Act, on obtaining registration under the RBI Act as a non-banking financial institution, can never be treated as an institution established under the RBI Act. The said contention is plainly untenable. The concept of establishment of an institution by or under an Act of Parliament is well established. Obtaining registration under an Act of Parliament will not make that institution established under the Act of Parliament. Further, a non-banking financial institution is not an institution, granting loan or advance in pursuance of the provisions of an Act, establishing it. Therefore, the

second ground also fails.

14. The next contention to be considered is whether, in view of the applicability of the provisions of the RBI Act to the petitioners, the provisions of the Money Lenders Act are inapplicable. The learned counsel for the petitioners pointed out that the provisions of Chapter III B of the RBI Act deal with money lending also. One of the main business of the petitioners is money lending. The money lending activity conducted by them is governed by the provisions of the RBI Act and the circulars issued thereunder. The RBI Act being a Parliamentary legislation, it will have effect, notwithstanding any provisions in a State legislation, it is submitted. Since the Parliamentary legislation already occupies the field, the provisions of the State Act can have no application to the petitioners, it is contended. In this case, the RBI Act is a legislation under Entry 43 of the List I of the 7th Schedule of the Constitution of India. The Money Lenders Act comes under Entry 30 of List II. These legislations, being under Lists I and II, normally, there cannot be any repugnancy. They occupy different fields. If there is some overlapping, it may be possible to say that the Parliamentary enactment will prevail. Now, the point to be considered is whether the provisions of Chapter III B of the RBI Act run counter to any of the provisions of the Kerala Money Lenders Act. The main contention of the petitioners is that with the introduction of the RBI Amendment Act in 1997 (Act 23 of 1997) with effect from 09.01.1997, the provisions of Chapter III B of the RBI Act underwent drastic changes. Even before 1997, the provisions of Chapter III B were very much there in the RBI Act. Let us glance through those provisions as they stood before

the 1997 amendment. The heading of the said chapter reads as follows :

> *"Provisions relating to Non-Banking Financial Institutions receiving deposits and Financial Institutions."*

Section 45H enumerates institutions to which the provisions of Chapter III B do not apply. The Banking Institutions such as State Bank of India, subsidiary banks, Nationalised Banks, Regional Rural Banks, Co-operative Banks and certain co-operative societies are excluded from the purview of Chapter III B. Section 45 I gives the definitions. Clause (bb) thereof defines deposit and clause (c) defines financial institution. Section 45 J authorises the Reserve Bank of India to prohibit the issue of advertisements, soliciting deposit of money by non-banking institutions. Section 45 K authorises the RBI to collect information from non-banking financial institutions concerning deposits and to give directions. Section 45 L also confers similar powers. Section 45 M obligates non-banking financial institutions to furnish statements or information or particulars called for by the RBI. Section 45MA authorises the auditors to furnish details of the deposits of non-banking financial institutions to the RBI if they are satisfied that the institution from which the details are called for, has not furnished correct reports regarding deposits received by it, to the RBI. Section 45N authorises the RBI to inspect the non-banking financial institutions. Section 45NA prohibits soliciting of deposits by unathorised persons on behalf of the banking institutions. Section 45Q provides that the provisions of Chapter III will override other laws.

15. After the amendment introduced as per Act 23 of 1997, there is no change to Section 45H. There is only some cosmetic changes in the definition

clause. But, a new section has been introduced as Section 45IA, which mandates registration for non-banking financial institutions provided, they are having net owned fund of Rs.25 lakhs or such other amounts, not exceeding Rs.200 lakhs, as the RBI may, by notification in official gazette, specify. The new section introduced as Section 45 IB mandates maintenance of the percentage of assets. The said provision mandates that every non-banking financial company shall, mandatorily invest in India in approved securities, an amount, which at the close of the business on any day, shall not be less than 5% or such higher percentage, not exceeding 25% of the deposits, as the RBI may notify from time to time. Section 45IC provides for creation of a reserve fund and also for transfer to that fund, a sum not less than 25% of the net profit every year as disclosed in the Profit and Loss Account before the declaration of dividend. Another newly introduced provision is Section 45JA . This provision enables the RBI to issue directions to all or to a particular non-banking financial company, to prevent the affairs of it from being conducted in a manner detrimental to the interest of the depositors or in a manner, prejudicial to the interest of the non-banking financial company itself. Four other provisions introduced in 1997 are Sections 45NB, 45NC, 45QA and 45QB. Section 45NB deals with regulation of publishing any information relating to a non-banking financial company. Section 45NC confers power on the RBI to exempt any non-banking financial institution or non-banking financial company, from the operation of the provisions of Chapter III B. Section QA empowers the Company Law Board to order repayment of deposits. Section 45 QB enables the depositors to nominate the person to whom the

deposits shall be released on their death. A close scanning of the provisions of Chapter III B before and after the amendment would show that those provisions are primarily meant to safe-guard the interest of depositors. The money received from the public as deposit should be safe and available for repayment, appears to be the main concern of the Parliament, reflected in those provisions. In other words, those provisions, generally, have nothing to do with money lending. But, the learned Standing Counsel for the RBI pointed out that the said Bank has issued the Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions 1998 under Section 45JA of the RBI Act. It deals with money lending also, it is submitted. Section 45 JA reads as follows :

> *"Power of Bank to determine policy and issue directions - (1) If the Bank is satisfied that in the public interest or to regulate the financial system of the country to its advantage or to prevent the affairs of any non-banking financial company being conducted in manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the non-banking financial company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any of the non-banking financial companies relating to income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off balance-sheet items and also relating to deployment of funds by a non-banking financial company or a*

class of non-banking financial companies or non-banking financial companies generally, as the case may be and such non-banking financial companies shall be bound to follow the policy so determined and the direction so issued.

(2) Without prejudice to the generality of the powers vested under sub-section (1), the Bank may give directions to non-banking financial companies generally or to a class of non-banking financial companies or to any non-banking financial company in particular as to -

(a) the purpose for which advances or other fund based or non-fund based accommodation may not be made ; and

(b) the maximum amount of advances of other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the non-banking financial company and other relevant considerations, may be made by that non-banking financial company to any person or a company or to a group of companies." *(emphasis supplied)*

The above provision, of course, enables the RBI to issue directions concerning deployment of funds by non-banking financial institutions to safeguard the interest of depositors. The power conferred is clearly meant to ensure that the funds received from the public are properly deployed so that, as stated earlier, they are available for repayment to the depositors. In other words, it is not a

provision meant to safeguard the interest of the borrowers. The aforementioned Prudential Norms are also meant to safeguard the interest of the non-banking financial institutions and their depositors.

16. But, the provisions of the Kerala Money Lenders Act are mainly meant to safeguard the interest of borrowers and to regulate money lending appropriately, though, incidentally, some of them deal with acceptance of deposit also. Section 3 of the Kerala Act mandates that every money lender shall obtain licence to do the money lending business. The licence granted under Section 4 will contain a stipulation that the deposits shall be accepted only in accordance with the provisions of the RBI Act and at such rates of interest not exceeding the rates fixed by the RBI under the Non-Banking Financial Companies (Reserve Bank) Regulations 1997. Section 7 deals with interest and charges applicable to money lenders. If a money lender refuses to accept the whole or any portion of the money offered, the debtor may deposit the money into the Court having jurisdiction over the area and seek reliefs from the Court. Section 9 mandates that the money lender shall keep books of accounts regularly. The accounts should show the details of each debt. The money lender should give the debtor or his agent, receipt for every payment made by him. Section 9A provides that every pawn broker shall, on taking a pledge, give to the pawner, a pawn ticket. Section 9B says that the person producing the pawn ticket is entitled to redeem the pledge. Section 9C deals with protection of owners of articles pawned and of pawners not having their pawn tickets to produce. Section 9D provides that pawn brokers should keep books of accounts and give receipts. Sections 9 E to H

also deal with pawn brokers. Section 9I provides for audit of accounts of money lenders. Section 10 empowers the Government to appoint Inspectors. Section 10A to C deal with the power to order production of accounts, powers of entry and inspection, power to summon witnesses, power to cause production of documents and the power to seek assistance of police officers. The advancing of money, which is lesser than that shown in the account, or levying interest at a higher rate than specified in the accounts, is an offence under Section 11. Section 11 A empowers the licensing authority to demand additional security. Section 13 provides punishment for molestation of debtor. Section 14 deals with cancellation of licence. Section 16A deals with forfeiture of security.

17. The above provisions of the Kerala Act would show that they are mainly meant to regulate money lending. Incidentally, it deals with acceptance of deposits also which shall be done in accordance with the Regulations of the RBI. As noticed earlier, the provisions of the RBI Act mainly deal with acceptance of deposits and the safety of depositors. The RBI is authorised to issue directions concerning the deployment of the amount received as deposits. So, those two Acts occupy different fields. There is no irreconcilable conflict between them. So, the provisions of both the Acts can co-exist. The petitioners have to comply with the stipulations in both the enactments. So, the petitioners, who are money lenders in terms of Section 2(7) of the Kerala Act, have to take licence under the said Act, notwithstanding their registration under Section 45IA of Chapter IIIB of the RBI Act. Therefore, the second contention of the petitioners that in view of the provisions of the RBI Act, the provisions of the Kerala Money Lenders Act are

inapplicable to them, cannot be accepted.

18. In the result, the challenge against the impugned orders/actions of the authorities under the Kerala Money Lenders Act and also against Letter No.13365/H2/05/TD dated 10.02.2006 of the Kerala Government, rejecting the representations of some of the non-banking financial companies, is repelled and the Writ Petitions are accordingly dismissed. No costs.

WP(C)NOS.24058/04, 8202/05, 33935/05, 2397/06, 6986/06, 7304/06, 7526/06, 8264/06, 10085/06, 10482/06, 11646/06, 11664/06, 12076/06, 12378/06, 12498/06, 12500/06, 12827/06, 13966/06, 14005/06, 14036/06, 16515/06, 17244/06, 17291/06, 17741/06, 18170/06, 24552/06 & 24659/06

19. The common Judgment in Writ Petition (C) Nos.18799/06 and 7173/06 will govern these cases also. Accordingly, these Writ Petitions are also dismissed. No costs.

14.02.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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